counterclaim for breach of such covenant. This ground of decision would seem to be in harmony with the later American cases, and to afford an equitable and workable rule.

MARRIAGE—EFFECT OF STATUTES PROHIBITING REMARRIAGE OF DIVORCED PERSONS.—The deceased married the defendant within three months after the former's divorce contrary to a statute prohibiting such remarriages. Objection was made to the appointment of the defendant as administratrix, on the ground that she was not the deceased's lawful widow. *Held,* since the statute did not expressly declare the remarriage void, it will be considered voidable, and not open to attack after the death of the intestate. *Woodward* v. *Blake* (N. D. 1917) 164 N. W. 156.

The earlier cases construing such statutes take the position that the legislature intended the second marriage to be void, whether the statute expressly declared it so or not. *Cox* v. *Combs* (1848) 47 Ky. 231; *Matter of Borrowdale* (N. Y. 1882) 28 Hun 336. But a contrary construction was later adopted in accordance with which the mere prohibition of remarriage did not, in the absence of other evidence of legislative intent, render the marriage void. *Crawford* v. *State* (1895) 73 Miss. 172, 18 So. 848. See Schouler, Domestic Relations (5th ed.) § 14. If the prohibition was imposed in order to permit the bringing of an appeal from the decree of divorce, there can, by the weight of authority, be no valid marriage within the statutory period, *In re Smith's Estate* (1892) 4 Wash. 702, 30 Pac. 1059; *Eaton* v. *Eaton* (1902) 66 Neb. 676, 92 N. W. 995; *Hooper* v. *Hooper* (1913) 67 Ore. 187, 135 Pac. 525, for as long as the decree is assailable it is not considered final. See *Warter* v. *Warter* (1890) 15 P. D. 152; *State* v. *Yoder* (1911) 113 Minn. 503, 130 N. W. 10. But even in such cases if the statute merely declares the act "unlawful" it has been held that the remarriage is voidable only. *Conn* v. *Conn* (1895) 2 Kan. App. 419, 42 Pac. 1006; *Mason* v. *Mason* (1884) 101 Ind. 25; see *McLennan* v. *McLennan* (1897) 31 Ore. 480, 50 Pac. 802. *A fortiori,* if the statute attaches a criminal penalty to the remarriage, it would seem that the legislature intended that the punishment should fall on the wrongdoer alone, and that the innocent spouse and offspring should be protected; yet the courts have generally declared the remarriage void. *Calloway* v. *Bryan* (1859) 51 N. C. 569; *White* v. *White* (1870) 105 Mass. 325; *Barfield* v. *Barfield* (1904) 139 Ala. 290, 35 So. 884; *contra, Park* v. *Barron* (1856) 20 Ga. 702, on the ground that the criminal penalty makes the contract illegal. *Ovitt* v. *Smith* (1895) 68 Vt. 35, 33 Atl. 769. But marriage is more than a contract. It is a status which the law endeavors to protect whenever policy permits. Holding the remarriage voidable only is good policy, for it preserves the rights of the innocent parties to the second marriage, while it does not preclude a prosecution for bigamy.

MASTER AND SERVANT—WORKMEN'S COMPENSATION ACTS—"OCCUPATIONAL DISEASES".—Plaintiff sued under the Workmen's Compensation Act for recovery for a neurosis caused by pressure on the brachial plexus from a leaning posture while at work as a cigar maker. *Held,* the injury complained of is not a "personal injury arising out of and in the course of employment" within the meaning of the statute. *In re Maggelet* (Mass. 1917) 116 N. E. 972.

The fact that the injury complained of is an "occupational disease" is no objection at common law to an action on the case based on the

employer's negligence, *Wiseman* v. *Carter etc. Co.* (1916) 100 Neb. 584; 160 N. W. 895; *Thompson* v. *United Lab. Co.* (1915) 221 Mass. 276, 108 N. E. 1042, or on his breach of statutory duty. *Jellico etc. and Co.* v. *Walls* (1914) 160 Ky. 730, 170 S. W. 19. But the courts are in conflict concerning a recovery for occupational diseases under Workmen's Compensation Acts. See *Miller* v. *American etc. Co.* (1916) 90 Conn. 349, 97 Atl. 345; Honnold, Workmen's Compensation § 138. Most jurisdictions deny relief whether the statute provides for recovery in case of "accident", *Liondale etc. Works* v. *Riker* (1914) 85 N. J. L. 426, 89 Atl. 929, or of "personal injury", *Adams* v. *Acme etc. Works* (1914) 182 Mich. 157, 148 N. W. 485; *Miller* v. *American etc. Co., supra*; *Industrial Comm.* v. *Brown* (1915) 92 Oh. St. 309, 110 N. E. 744; *contra, Johnson's Case* (1914) 217 Mass. 388, 104 N. E. 735. In England recovery is limited to the diseases specified in the act unless of accidental origin, 5 & 6 Edw. VII. c. 58 § 8. sched. 3; *Eke* v. *Hart-Dyke* [1910] 2 K. B. 677, and since a gradual deterioration from over-work is not an accident within the British statute, there will be no recovery in such a case. *Walker v. Hockney Bros.* (Eng. 1909) 2 Butterworth W. C. C. 20. But the Massachusetts Act requires only a "personal injury," and this having been established, even though the injury is a rare ailment not among recognized vocational diseases, *Hurle's case* (1914) 217 Mass. 223, 104 N. E. 336, there will be a recovery if the employment contributes at all to the disability. *Madden's Case* (1916) 222 Mass. 487, 111 N. E. 379. The objection that no time can be fixed for the occurrence of the injury, *Liondale etc. Works* v. *Riker, supra,* is overcome by regarding it as beginning when the employee becomes unable to work. *Johnson's Case, supra.* These broad holdings would seem to have justified allowing a recovery in the principal case, but in limiting their application the court reached a sound and just conclusion.

MORTGAGES — BANKRUPTCY OF MORTGAGOR — MORTGAGEE'S RIGHT TO RENTS.—A foreclosure sale of realty did not realize enough to satisfy a third mortgage held by the plaintiff. A trustee in bankruptcy of the assets of the mortgagor had collected rents from the mortgaged premises between adjudication and foreclosure. After foreclosure, the plaintiff seeks to have the rents applied to meet the deficiency. *Held,* the mortgagee is entitled to have the rents applied for this purpose. *In re Dooner* v. *Smith* (D. C., D. N. J. 1917) 243 Fed. 984.

Although the mortgagor in possession is entitled to rents, *Teal* v. *Walker* (1884) 111 U. S. 242, 4 Sup. Ct. 420, yet when it appears that the proceeds from a foreclosure sale of the mortgaged premises will not be sufficient to satisfy the mortgage debt, the mortgagee may have a receiver appointed to collect and apply the rents from the date of application to the satisfaction of his claim. 2 Jones, Mortgages (7th ed.) § 670. The question presented in the instant case is whether the mortgagee is entitled to have the rents applied to the satisfaction of his claim even though no receiver for his benefit has been appointed. One court has held a mere demand by the mortgagee is sufficient to entitled him to the rents, *In re Bennett* (C. C. 1877) 3 Fed. Cas. No. 1313, while there is authority for holding the appointment of a receiver for the benefit of the mortgagee to be essential. *Hunter* v. *Hays* (C. C. 1877) 12 Fed. Cas. No. 6906; see *In re Foster* (D. C. 1872) 9 Fed. Cas. No. 4963, aff'd *Foster* v. *Rhodes* (C. C. 1874) 9 Fed. Cas. No. 4981. These latter cases, however, are based on the